

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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HIGHLAND-HOWELL DEVELOPMENT  
COMPANY, LLC,

UNPUBLISHED  
January 31, 2006

Petitioner-Appellant,

v

TOWNSHIP OF MARION,

No. 262437  
Michigan Tax Tribunal  
LC No. 00-307906

Respondent-Appellee.

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Before: Donofrio, P.J. and Zahra and Kelly, JJ.

PER CURIAM.

Petitioner appeals as of right the Tax Tribunal's order, on reconsideration, granting summary disposition in respondent's favor. We affirm.

**I. Facts**

For an accurate understanding of the issues on appeal, it is necessary to review the factual and procedural history of this case, which is rather extensive.

**A. Prior Petition**

According to stipulated facts, petitioner owns land in Marion Township, which is zoned for mobile home development. In early 1996, respondent planned to extend the sewer lines, including a "trunk line" that would cut across petitioner's proposed trailer park site. This would have benefited petitioner eliminating the need to construct a connection with sewer lines further away. Respondent later adopted resolutions creating a special assessment district, to which petitioner raised no objection. Respondent confirmed the special assessment roll on December 2, 1996. In mid-1997, respondent modified the sewer expansion plans to eliminate the trunk line across petitioner's property and instead run the line along the edge of petitioner's property. This decreased the value of the project to petitioner. In July 1998, petitioner filed a petition challenging respondent's December 2, 1996, special assessment (MTT Docket No. 261431). On April 21, 1999, respondent passed a second special assessment. On May 13, 1999, petitioner filed a petition challenging respondent's April 21, 1999, special assessment (MTT Docket No. 266534). The Tax Tribunal consolidated these two petitions into one (MTT Docket No. 261431).

On March 19, 2004, the Tax Tribunal entered an order in which it adopted the conclusions of law in the proposed opinion and judgment, and ruled that it did not have jurisdiction over the challenge to petitioner's December 2, 1999, assessment because petitioner did not object within 30 days of the final decision on the assessment as required by MCL 205.735(1) and (2) of the Tax Tribunal Act, MCL 205.701 *et seq.* The Tax Tribunal noted that those requirements determine whether it has jurisdiction. It further determined that "neither official nor unofficial changes to the *plans* rendered the December 2, 1996 confirmation of the roll invalid, nor did it render any assessment on the individual property invalid." The Tax Tribunal also rejected petitioner's argument that the jurisdiction requirements should be excused because respondent changed the sewer plans after it confirmed the assessment. The Tax Tribunal determined that petitioner's arguments in this regard were based on equity and due process. However, it determined that it had no authority to invoke due process or resort to equity to avoid statutory jurisdictional requirements. The Tax Tribunal also ruled that, while respondent failed to change the plans in conformity with MCL 41.725(b) of the Public Improvements Act, MCL 41.721 *et seq.*, that failure did not give the Tax Tribunal jurisdiction over petitioner's challenge to the December 2, 1996, assessment. The Tax Tribunal also appears to have determined that it did not have original jurisdiction over any complaint regarding respondent's failure to comply with the Public Improvements Act: although it noted that the Public Improvements Act required a formal resolution of the change in sewer plans, the Tax Tribunal also noted that the act "does not provide a remedy, penalty, or consequence for departing from statutory procedures in this present context."

Petitioner filed a claim of appeal, which was dismissed by this Court for lack of jurisdiction. Unpublished order of the Court of Appeals, entered May 26, 2004 (Docket No. 254697). In a subsequent application for leave to appeal, petitioner argued that the Tax Tribunal erred in ruling that petitioner's failure to comply with the MCL 205.735 requirements deprived it of jurisdiction over petitioner's challenge to the December 2, 1996, assessment. This Court denied the application for lack of merit in the grounds presented. Unpublished order of the Court of Appeals, entered August 13, 2004 (Docket No. 254835).

#### B. Circuit Court Case

In August 1998, petitioner filed a complaint in Livingston Circuit Court alleging breach of promise to construct a sewer line on plaintiff's property and challenging the special assessment. The trial court dismissed on the basis that the claims fell within the Tax Tribunal's exclusive jurisdiction. On appeal, this Court ruled that the Tax Tribunal had exclusive jurisdiction over the challenge to the assessment, but not over the breach of promise claim. *Highland-Howell Development Co, LLC v Marion Twp*, unpublished opinion per curiam of the Court of Appeals, issued November, 19, 2002 (Docket No. 231937). Our Supreme Court affirmed this decision. *Highland-Howell Development Co, LLC v Marion Twp*, 469 Mich 673, 678; 677 NW2d 810 (2004).

#### C. This Petition

In June 2004, petitioner filed the petition in this case alleging generally that, on December 2, 1996, respondent imposed a special assessment roll after formally approving plans for sewer improvements, which included a trunk line approximately one mile long across petitioner's property. In 1997, respondent informally eliminated the sewer trunk line across

petitioner's property without notice to petitioner, without a public hearing, and without a formal township board resolution. On May 13, 2004, respondent formally adopted a resolution approving the elimination of the sewer trunk line across petitioner's property.

Petitioner alleged that respondent's elimination of the sewer trunk across petitioner's property violated the Public Improvements Act and is illegal and void because it changed the benefit to the assessed property after imposing the special assessment and after the time for protesting or appealing the special assessment had passed. Petitioner alternatively alleged that the change in sewer plans substantially changed the benefit to petitioner and the assessment was not proportional to the benefit as required by MCL 41.725(1)(d). Accordingly, petitioner requested that the Tax Tribunal either order respondent to build the sewer project according to the original plans or "reduce the special assessment" imposed on petitioner's property and order a refund with interest.

Respondent filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(10). Respondent argued that the only difference between this petition and the prior petition is that, since the time of the prior petition, respondent adopted a formal resolution changing the sewer line. Respondent argued that the Tax Tribunal already ruled, however, that a formal resolution was required to effectuate the plan change. Because this issue was already decided, respondent argued, relitigating the same issue is precluded. Respondent further argued that the May 13, 2004, resolution does not provide a new basis for challenging the change in the sewer line because either the resolution is valid, or it is invalid and the issue of whether the unofficial change was illegal was already litigated in the prior petition.

Petitioner responded arguing that res judicata and collateral estoppel did not apply to the Tax Tribunal's prior ruling because it was not a final decision, the dismissal for lack of subject matter jurisdiction did not preclude this action, and the prior ruling did not and could not have decided the legality of actions taken after that ruling occurred. Petitioner also moved for summary disposition under MCR 2.116(I)(2) arguing that respondent officially approved the plans for putting a sewer line across petitioner's property and then, after confirming a special assessment of petitioner's property, informally changed the sewer plans and completed the sewer without putting a line across petitioner's property. Petitioner argued that this violated the Public Improvements Act and respondent's subsequent attempt to retroactively officially approve that change was also illegal. Petitioner argued that, because the informal and formal changes to the sewer plan were invalid, the Tax Tribunal should order respondent to build the sewer line across petitioner's property. Petitioner relied on the Tax Tribunal's broad powers to remedy an alleged irregularity. In the alternative, petitioner contended that, if the May 13, 2004, resolution was valid then petitioner should be permitted to challenge the amount of the special assessment because the resolution substantially changes the benefit to petitioner.

The Tax Tribunal denied both respondent's and petitioner's motions for summary disposition. The Tax Tribunal concluded that the May 13, 2004, resolution to eliminate the sewer line across petitioner's property was valid pursuant to MCL 41.725(1)(b). The Tax Tribunal also concluded that res judicata was inapplicable because the prior ruling was not an adjudication on the merits and the facts have changed since that ruling. The Tax Tribunal also concluded that collateral estoppel did not apply because the issue in this case was not litigated in the first action.

The Tax Tribunal later granted respondent's motion for reconsideration and granted respondent's motion for summary disposition. The Tax Tribunal found:

The Tribunal's March 19, 2004 final Opinion and Judgment dismissing Docket No. 261431 was an adjudication on the merits with regard to the questions of law and fact relevant to the Tribunal's lack of jurisdiction over the petition filed in Docket No. 261431. In that case, Petitioner sought relief with regard to the special assessment that was entered on the special assessment roll that was confirmed December 2, 1996. The factual and legal conclusions in Docket No. 261431 are dispositive in this case and have *res judicata* effect. It has been ruled that the Tribunal lacks jurisdiction over the special assessment on the role that was validly confirmed on December 2, 1996, and that the role became final and conclusive and not subject to appeal 30 days after confirmation. No subsequent act or omission by Respondent changed that legal ruling.

Specifically, the Tax Tribunal cited the portion of its prior ruling, which stated, "The Tribunal finds that in our present case, neither official nor unofficial changes to the *plans* rendered the December 2, 1996 confirmation of the *roll* invalid, nor did it render any assessment on an individual property invalid." Accordingly, the Tax Tribunal ruled that it already decided that changes in the sewer plans, whether "official or unofficial," have no effect on the validity of the December 2, 1996, special assessment roll. It further held: "The May 13, 2004 resolution by the Township of Marion does not allow Petitioner to appeal the special assessment that was confirmed December 2, 1996." The Tax Tribunal held that by law, the amounts assessed on the roll confirmed December 2, 1996, became final 30 days after confirmation and cannot be overturned on the basis of respondent's failure to comply with the Public Improvements Act.

MTT Docket No. 266534, previously consolidated with MTT Docket No. 261431, was consolidated with this case on December 1, 2004. In the order granting respondent's motion for summary disposition, the Tax Tribunal severed Docket No. 266534 from this case. Thus, the only issue decided in the Tax Tribunal in this case concerned the December 2, 1996, assessment, not the April 21, 1999, assessment.

## II. Analysis

On appeal, petitioner asserts that the Tax Tribunal erred in holding that the dismissal of the petition in MTT Docket No. 261431 barred the petition in this case on the basis of *res judicata*. We agree, but find that collateral estoppel applies. To the extent that portions of the petition are not barred by collateral estoppel, the Tax Tribunal did not err in dismissing petitioner's claims because the Tax Tribunal had no original jurisdiction over them.

Although this Court generally reviews a grant of summary disposition under MCR 2.116(C)(7) *de novo*, *Rinas v Mercer*, 259 Mich App 63, 67; 672 NW2d 542 (2003), review of Tax Tribunal decisions is more limited, *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). In the absence of an allegation of fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle. *Id.* at 490-491.

The applicability of the doctrine of res judicata is reviewed de novo on appeal. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999). Res judicata bars relitigation of claims, between the same parties, that are based on the same transaction or events as a prior suit. The doctrine applies when (1) the prior action was decided on the merits, (2) the decree in the prior decision was a final decision, (3) both actions involved the same parties or their privies, and (4) the matter in the second case was or could have been resolved in the first. *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001). With respect to the fourth requirement, if different facts or proofs would be required, res judicata does not apply. *VanDeventer v Michigan Nat'l Bank*, 172 Mich App 456, 464; 432 NW2d 338 (1988).

Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding. *Barrow v Pritchard*, 235 Mich App 478, 480; 597 NW2d 853 (1999). For collateral estoppel to apply, the same parties must have had a full and fair opportunity to litigate the issue. *VanVorous v Burmeister*, 262 Mich App 467, 480; 687 NW2d 132 (2004).

In the prior petition, the Tax Tribunal, noted that all the facts on which it based its determination were stipulated. It further stated that it acquires jurisdiction over a special assessment appeal only if a petitioner first protests at the hearing held for the purpose of confirming the special assessment roll. MCL 205.735(1). The Tax Tribunal's jurisdiction is invoked by the filing of a written petition within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review. MCL 205.735(2). The Tax Tribunal then determined that, respondent's failure to conform to the requirements of the Public Improvements Act did not excuse the jurisdictional requirements in MCL 205.735(2). Petitioner appealed this ruling to this Court arguing that the jurisdictional requirements of MCL 205.735(2) could be waived, because respondent's actions induced petitioner not to object, and because respondent's failure to comply with the Public Improvement Act rendered the assessment void. This Court denied petitioner's application for leave to appeal for lack of merit on the grounds presented.

#### A. Petitioner's Challenge to the December 2, 1996, Assessment

In this case, petitioner again alleged that, because respondent changed the sewer plans after the December 2 1996, roll assessment, petitioner is entitled to challenge the December 2 1996, roll assessment. This issue was already resolved in the prior petition, where the Tax Tribunal held that a departure from the requirements of the Public Improvements Act does not excuse the jurisdictional requirements in the Tax Tribunal Act. The Tax Tribunal already ruled that it had no jurisdiction over petitioner's challenge the December 2, 1996, roll assessment because petitioner failed to initiate the challenge within 30 days of confirmation of the roll assessment. This issue actually and necessarily determined in the prior proceeding, *Barrow*, *supra* at 480 and the same parties had a full and fair opportunity to litigate the issue, *VanVorous*, *supra* at 480.

Although this Court denied petitioner's claim of appeal of the ruling in MTT Docket No. 261431, it did so on the basis that the claims in the consolidated MTT Docket No. 266534, were still outstanding. However, the claims in MTT Docket No. 266534 were apparently severed

from MTT Docket No. 261431 because the Tax Tribunal later consolidated those claims with the claims in this petition. Later, it severed the claims in Docket No. 266534 from this case as well. Therefore, we conclude that MTT Docket No. 261431 culminated in a valid final judgment.

To the extent that the prior petition did not, and could not have, specifically challenged the December 2, 1996, assessment in light of the May 13, 2004, formal change in the sewer plans, we conclude that the formal change has no effect on the jurisdictional requirements of MCL 205.725. Therefore, as in the prior petition, because petitioner failed to challenge the December 2, 1999, assessment within 30 days of its confirmation, the Tax Tribunal had no jurisdiction to address petitioner's challenge to the assessment.

#### B. Petitioner's Challenge to the Change in Sewer Plans

Petitioner also alleged in this petition that, because of respondent's May 13, 2004, formal approval of the change in sewer plans did not comply with the Public Improvements Act, the Tax Tribunal should declare that respondent's change in the sewer plans was illegal and void, and the governing plans for the project should be those in existence before the December 2, 1996, roll assessment, and that respondent must build the sewer in accordance with those plans.

However, the Tax Tribunal does not have exclusive jurisdiction over any claim that respondent failed to comply with the Public Improvements Act or any request that respondent be required to rebuild the sewer. Section 31 of the Tax Tribunal Act provides:

The tribunal's exclusive and original jurisdiction shall be:

(a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws.

(b) A proceeding for refund or redetermination of a tax under the property tax laws.

Petitioner's claim that respondent should be required to build the sewer in accordance with the original sewer plans because respondent failed to comply with the Public Improvements Act does not seek a review "relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws." Rather, this claim relates to compliance with the Public Improvements Act. Nor does the claim seek a "refund or redetermination of a tax under the property tax laws." Rather, it seeks to have respondent rebuild the sewer. Thus, the Tax Tribunal did not have exclusive jurisdiction over this claim.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Brian K. Zahra  
/s/ Kirsten Frank Kelly